

Chapter 27: RULES OF PRACTICE AND PROCEDURE OF GAMING CONDUCT

Summary: This rule establishes procedures for the investigation and resolution of complaints received by the Gambling Control Board. This rule should be read in conjunction with the statutory provisions for adjudicatory proceedings in the *Maine Administrative Procedure Act*. The rule helps to ensure that the investigation and resolution of complaints is handled in an expeditious and procedurally fair manner.

§ 1. Licensing Actions**1. Complaints and Investigations**

- A. All complaints shall be submitted to the department in writing. The Board may request that complaints be submitted on a complaint form authorized by the Board and with supporting documentation or other materials. The department may initiate a complaint alleging any ground for disciplinary action.
- B. The department or its designee shall investigate complaints in accordance with 8 M.R.S. §1051(1). The department may provide the complainant with information obtained as part of its investigation, as the Board or the department determines to be necessary to facilitate the investigation.

2. Resolution of Complaints

The director must review all complaints and investigative files and, in the director's discretion, may consult with an Assistant Attorney General assigned to the Board and the Maine State Police Commander of the unit that regulates gambling. Following this review and any consultation, the director may take any of the following actions:

- A. File a notice of complaint and request for hearing with the Board, in accordance with 8 M.R.S. §1051(2);
- B. Issue a notice of violation and proposed sanction in accordance with 8 M.R.S. §1051(2) and enter into a consent agreement with the licensee;
- C. Issue a letter of guidance or concern pursuant to 8 M.R.S. §1053(4). A letter of guidance or concern issued by the director pursuant to this section may be appealed to the Board in accordance with 8 M.R.S. §1051(4);
- D. Request additional investigation; or
- E. Dismiss the complaint or otherwise close the investigation. Dismissal may be appropriate when the complaint alleges conduct that is not a violation of Gambling Control Board statute or rules, is factually unfounded, or is of

insufficient gravity to warrant further action. Notice of dismissal must be sent to any complainants.

§ 2. Notice of Violation

1. If, based upon the information obtained from the investigation, the director determines that the complaint is or may be true and the violation is of sufficient gravity to warrant further action, the director may send the licensee a written notice of violation and proposed sanction.
2. The written notice of violation shall state the alleged violation, the statute or rule believed to have been violated, and the proposed resolution, and shall inform the licensee that the licensee has the right to request a hearing.
3. Service is complete upon mailing to the party or the party's attorney using the last known address, or upon in-hand delivery to the recipient or the recipient's office in accordance with 5 M.R.S. §9051(3).
4. The licensee must file a written request for hearing within thirty days of receipt of the notice of opportunity for hearing. The request is considered filed when received by the director. The Board may extend this period for good cause shown.
5. If the licensee makes a timely request for a hearing, that hearing shall be held in accordance with Section three of this rule.
6. A consent agreement reached by the director and the licensee following a notice of violation must be presented to the Board. The Board may approve or reject a consent agreement, or may recommend amended language.
7. Failure to make a timely request for hearing shall be a waiver of any right to a hearing and may result in the proposed action becoming final without further hearing, in accordance with 5 M.R.S. §9053(3), if the notice of violation informed the licensee of the possibility of default.

§ 3. Hearings

1. If, following an investigation, the director determines that the complaint should be set for hearing for any reason, including to resolve issues of substantial public interest or to make credibility determinations, the director shall serve the licensee with the notice of complaint and request for hearing in accordance with 5 M.R.S. §§ 9051(3) and 9052 and shall file a copy with the Board.
2. In the event of a hearing, the provisions of the *Administrative Procedure Act*, Title 5, Chapter 375, subchapter 4 will govern.
3. When the circumstances of a particular proceeding require more detailed procedures than those set forth in this rule, additional procedures may be specified by the hearing officer, by order applicable to that particular proceeding.

4. When a hearing is held, the Board may appoint a hearing officer in conformity with the provisions of the *Administrative Procedure Act* to conduct the hearing and to make the proposed findings of fact and conclusions of law. If the Board appoints a hearing officer to perform these tasks, the hearing may take place outside of the Board's presence.
5. Following a hearing, any proposed findings of fact, or any proposed decision prepared by the hearing officer shall be in writing. A copy shall be provided to each party, with the opportunity to file responses or exceptions. The hearing officer shall set the time within which responses or exceptions may be filed. The hearing officer may amend the proposed findings of fact or decision based upon the responses and exceptions filed. A decision of the Board upon a recommended decision of the hearing officer constitutes final agency action.
6. For each violation of 8 M.R.S. Chapter 31, the Board's rules, or conditions of licensure or registration, the Board may take one or more of the following actions in accordance with 8 M.R.S. §1053(1):
 - A. Issue a warning, censure or reprimand to a licensee or registrant. Each warning, censure or reprimand issued must be based upon a violation of a different applicable law, rule or condition of licensure or must be based upon a separate instance of actionable conduct or activity;
 - B. Suspend a license or registration for up to 360 days for each violation of an applicable law, rule or condition of licensure or registration or instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the licensee's or registrant's record;
 - C. Revoke a license or registration;
 - D. Impose a fine of up to \$100,000 for each violation of an applicable law, rule or condition of licensure or registration or instance of actionable conduct or activity;
 - E. Impose conditions of probation upon a licensee or registrant. Probation may run for such time period as the Board determines appropriate; and
 - F. Impose costs of investigation and hearing.

STATUTORY AUTHORITY: 5 M.R.S. §§ 8051, 9062; 8 M.R.S. §§ 1003(1), 1051-1054.

EFFECTIVE DATE:

November 30, 2014 – filing 2014-275